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Date

6/15/90

Signature

APR 25 1990

Employer Identification Number: [REDACTED]
Key District Office: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(12) of the Internal Revenue Code and concluded that you are not exempt under section 501(c)(12). The reasons for our conclusion are explained below.

The information submitted discloses that you were organized on [REDACTED], under the laws of the State of [REDACTED]. Your Articles of Incorporation state you will be operated on a cooperative, nonprofit basis for the mutual benefit of your members. Your purpose, as stated in your Articles of Incorporation, is making satellite television services available to your members, including the sale or rental of satellite television dishes and descramblers. Your membership is composed of individuals and corporations that purchase satellite television services from you.

Your membership is divided into two classes, Class A and Class B. The sole Class A member is [REDACTED]. [REDACTED] is a rural electric cooperative. [REDACTED] is the only voting member of your organization. Class B members are individuals and corporations other than [REDACTED] who purchase satellite television services from you.

[REDACTED] established your organization and loaned it its initial operating capital. [REDACTED] hopes to use your satellite dishes to send satellite signals to load-management control switches at the homes of your member-subscribers, thereby selectively turning on or

"This ruling is applicable to the taxpayer named herein. It must not be relied on, used, or cited as a precedent by Internal Revenue Service personnel in the disposition of other cases."

off heavy use electric appliances during periods of peak demand for electricity. You have entered into a contract with [REDACTED] whereby [REDACTED] provides your organization with administrative, accounting, construction, installation, maintenance, and operations services on a cost reimbursement basis.

Section 501(c)(12) of the Code provides exemption for benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

One of the essential characteristics of a mutual or cooperative organization is democratic control by the members of the organization. The necessity for democratic control was acknowledged by the Tax Court in Puget Sound Plywood, Inc. v. C.I.R., 44 T.C. 305 (1965), acq. 1966-1 C.B. 3.

The principle of democratic control is reflected in section 521(a)(2) of the Code and section 1.521-1(a)(3) of the Income Tax Regulations. Section 521(a)(2) of the Code provides that a farmers' cooperative may have capital stock--

"...if substantially all such stock (other than nonvoting preferred stock...) is owned by producers who market their products or purchase their supplies and equipment through the association."

Section 1.521-1(a)(3) of the regulations provides that--

"[a]nyone who shares in the profits of a farmers' cooperative marketing association, and is entitled to participate in the management of the association, must be regarded as a member of such association within the meaning of section 521."

The fundamental cooperative principles underlying the exemption conferred by section 521 also govern the exemption of mutual and cooperative organizations described in section 501(c)(12). In accordance with these principles, the rights and interests of the members of an organization exempt under section 501(c)(12) are determined in proportion to their business with the organization. See Rev. 72-36, 1972-1 C.B. 151. A substantial departure from such democratic ownership, operation, and control will disqualify an organization for exemption under section 501(c)(12) of the Code.

You are not democratically controlled by your members because

the sole voting member of your organization is [REDACTED]. You, therefore, lack one of the essential characteristics that an organization must have in order to be a mutual or cooperative organization within the meaning of section 501(c)(12) of the Code.

You also propose to engage in an activity which is not a mutual or cooperative undertaking of your members. That activity is providing [REDACTED] with use of your facilities to allow [REDACTED] to control load usage by its customers. Since your members other than [REDACTED] are not electric companies, it is apparent that they share no mutual interest with [REDACTED] in this aspect of your operations. Therefore, even if you were exempt under section 501(c)(12), income from providing load management services to [REDACTED] would not be counted toward satisfying the 85% member-income test.

Since you are organized and operated to provide preferential treatment to [REDACTED], we have concluded that you are not a mutual or cooperative organization within the meaning of section 501(c)(12) of the Code.

You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter to the following address:

Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224
Attn: [REDACTED]

You have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, if you have any questions about your federal income tax status, including questions about the filing of tax returns, you should contact your key District Director.

[REDACTED]

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In accordance with the power of attorney authorizing him to represent you, a copy of this letter is being furnished to [REDACTED].

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: [REDACTED]

cc: [REDACTED]

Attn: EO Group